

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2009

CORAM

THE HONOURABLE Mr.JUSTICE K.CHANDRU

W.P.No.3278 of 2009 and

M.P.No.1 of 2009

P.Duraisamy

.. Petitioner

Vs

1. The Public Information Officer

O/o Assistant Director of Handlooms & Textiles

Bhavani Main Road, Veerappanchathiram Post

Erode Circle, Erode, Erode District.

2. The Special Officer

Chennimalai Siragiri Murugan Weavers

Co-op. Society Ltd., Chennai 2,

Chennimalai, Erode District.

3. R.Natarajan

4. C.C.Rajendran

.. Respondents

PRAYER: This Writ petition came to be filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings No.Na.Ka.1701/2009/P dated 29.1.2009 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.R.Neelakandan, G.A.-R1

O R D E R

The petitioner is the member of the second respondent Co-operative Society. Respondent Nos. 3 and 4 sought for certain information from the Public Information Officer, attached to the Office of the Assistant Director of Handlooms and Textiles. The first respondent pursuant to the request made by the fourth respondent, passed an order dated 29.1.2009 and directed the five Co-operative Societies including the second respondent Co-operative Society to furnish the information sought for. In the Application for seeking information, Respondent Nos. 3 and 4 requested various details amounting to 50 items. Many of them are related to the functioning of the Society, the qualifications of the Manager of the Society, the details of movable and immovable properties of the Co-operative Societies and the expenditure incurred by them. On the Notification issued by the first respondent Public Information Officer, the second respondent Society convened a meeting of its members and resolved that the information requested by the respondent Nos. 3 and 4 should not be granted without the permission of the members. If such information are furnished by the Special Officer, all the members will resign enmass. Pursuant to the said resolution, the petitioner who presided over the said meeting, filed the present Writ Petition challenging the direction given by the first respondent dated 29.1.2009.

2. The Writ Petition was admitted on 23.4.2009 and an interim order of stay was granted on the same day. Subsequently, the matter came up for hearing.

3. Heard Mr.C.Prakasam, learned counsel for the petitioner and Mr.R.Neelakandan, Government Advocate for first respondents.

4. The question raised by the petitioner in the affidavit was that the case is covered by sections 8G and 8J of the Right to Information Act 2005. Therefore, it was contended that the furnishing of such information is exempted by the Government and therefore the same should not be furnished. It is also stated that the authorities are can refuse to give information in terms of section 11 of the Act. It is also stated that the third respondent when he was working as Manager in the Thippapalayam Weavers Co-operative Society had misappropriated several amounts and therefore such information should not be furnished to the black mailers like third and fourth respondents.

5. However, this Court is unable to agree with the said submissions raised by the petitioner. Though section 8 of the Act provides for exemption under section 11 of the Act, the Information Officer has power to give notices to such parties and after affording opportunity can decide whether or not to disclose the information or record, or part thereof and give it in writing of the notice of his decision to the third party. Any person who is aggrieved of such an order passed under section 11 r/w section 8 of the Act has a right to file an Appeal under section 19 of the Act to the Appellate Authority.

6. It must be noted that the Co-operative Society like the second respondent Society though a Membership Society, it is run by State subsidy and therefore the affairs of the Society cannot kept at dark. The authorities constituted under the Act are empowered to take several action including the ordering enquiry, surcharge or supersession or winding up. If the Society is not run for the purpose for which it is registered, the said issue can be sought for as an information including the action taken by the authorities against the said Society. It must also be noted that the motive of the applicant seeking for information is irrelevant while deciding whether to part with information under the Right to Information Act. In fact Section 8(1)(d) of the Right to Information Act only talks about commercial confidence, trade secrets which disclosure will harm competitive position to a third party. However, no total immunity can be claimed by any so called third party and it is for the competent authority to be satisfied in a large public interest which may warrant such disclosure. It must also be noted that if a person who seeks for document is a

business competitor and if any trade secret is sought for, then such document may be denied, but, regarding a public document if sought for by an individual, whatever the motive of such individual in calling the document has no relevancy as the right of the Act had not made any distinction between a specific and so called motivated citizen.

7. A similar question came up for consideration before this Court in V.V.MINERAL Vs. DIRECTOR OF GEOLOGY & MINING reported in (2007) 4 MLJ 394. This Court after rejecting the immunity claimed by the third party also pointed out that in such circumstances, the aggrieved person will have to move an appeal under section 19 of the act and he cannot come forward to challenge the direction to furnish such information. The Act is a self contained code and any aggrieved person will have to avail the remedy provided under the said Act. In paragraph No. 18, it has been stated as follows:

"18. In any event, as contended by the learned counsel for the petitioner that under Section 11(3) read with Section 19 of the RTI Act if he has not been given any notice as referred above, a Second Appeal is provided under Section 19(3) to the State Information Commission. There is no whisper in the affidavit as to why the petitioner had not approached the State Commission as provided under the Act. In fact, the contention made in para 5 of the affidavit, is that there is no other efficacious remedy to the petitioner is contrary to the provisions of the Act. The Commission is a wider body and clothed with all the powers of a Civil Court under Section 18(3) of the RTI Act and therefore, it is misnomer to call it as a non-efficacious remedy."

8. Similarly the very same question came up for consideration in respect of details regarding a Co-operative Society and when the third party filed the Writ Petition, this Court rejected the said Writ Petition in A.C.SEKAR Vs. DY. REGISTRAR OF CO-OP. SOCIETIES reported in (2008) 2 MLJ 733. In paragraph No.9 of the said order it was averred as follows:

"9. Therefore, the attempt of the petitioner to thwart the direction issued by the first respondent cannot be countenanced by this Court. In fact, in these days, when there is an increasing allegation of misfeasance and malfeasance committed in fair price shops are coming to the notice of the public, the RTI Act can be potent weapon to check such illegal and criminal activities of the staff employed in those

shops. If ultimately by furnishing of such information, the affairs of the Society can be brought to the attention of the authorities, who are in charge of supply of essential commodities, it can stem the tide of further rot into the system."

9. In the light of the above legal precedent to the factual matrix of this case, the petitioner's opposition to state parting of information by the second respondent is actually misconceived. Accordingly, the Writ Petition stands dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

27.11.2009

Index : Yes

Internet: Yes

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